TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 156.

JOHN N. HALL, JAS. J. THORNTON, A. F. HAWLEY, J. B. HUBBELL, PHILIP BLATT, J. R. TINKHAM, WM. REID, D. H. TYNER, M. T. C. FLOWER, AND C. T. HEILBORN, PLAINTIFFS IN ERROR,

VS.

THE UNITED STATES.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

FILED MARCH 2, 1874.

SUPREME COURT OF THE UNITED STATES.

No. 156.

JOHN N. HALL, JAS. J. THORNTON, A. F. HAWLEY, J. B. HUBBELL, PHILIP BLATT, J. R. TINKHAM, WM. REID, D. H. TYNER, M. T. C. FLOWER, AND C. T. HEILBORN, PLAINTIFFS IN ERROR,

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

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1 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States of America in and for the district of Minnesota, greeting:

Because in the record and process, and also in the rendering of judgment, in a suit before you, or some of you, between the United States of America, plaintiff, and John Norris Hall, James Johnson Thornton, Alpheus Fenn Hawley, James Boyd Hubbell, Philip Blatt, James Ray Tinkham, William Reid, Daniel Harris Tyner, Marcus Tullius Cicero Flower, Charles Theodor Heilborn, defendants, in a plea which is in the said circuit court, a manifest error hath happened, to the great damage of the said defendants, as they say; and it being fit that the error, if any there hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States of America, together with this writ, so that you have the same at Washington on the first Monday in December next, in the said
2 Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the law and custom of the United States should be done.

Witness the honorable Nathan Clifford, senior associate justice of the Supreme Court of the United States of America, at Saint Paul, in the district of Minnesota, this 19th day of July, in the year of our Lord one thousand eight hundred and seventy-three, and of our Independence the ninety-eighth year.

[SEAL.] H. E. MANN,
Clerk U. S. Circuit Court, Dist. of Minnesota.

3 UNITED STATES OF AMERICA,
District of Minnesota, ss:

The answer of the judges of the circuit court of the United States for the district of Minnesota in within writ mentioned.

The record and proceedings whereof mention is within made, with all things concerning the same, are hereby respectfully certified to the justices of the Supreme Court of the United States within mentioned, in a certain schedule to this writ annexed, as within it is commanded.

Witness the honorable Nathan Clifford, senior associate justice of the Supreme Court of the United States, the tenth day of September, in the year of our Lord one thousand eight hundred and seventy-three, and of the Independence of the United States the ninety-eight year.

[SEAL.] H. E. MANN, *Clerk.*

(Indorsed:) Supreme Court United States. J. N. Hall, A. F. Hawley, et al., plff'. in error, vs. The United States, deft. in error. Writ of error.

4 UNITED STATES OF AMERICA, *ss:*

To the United States of America, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second

Monday of October next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Minnesota, wherein John Norris Hall, James Johnson Thornton, Alpheus Fenn Hawley, James Boyd Hubbell, Philip Blatt, James Ray Tinkham, William Reid, Daniel Harris Tyner, Marcus Tullius Cicero Flower, and Charles Theodor Heilborn are plaintiffs in error and the United States of America are defendants in error, to show cause, if any there be, why the judgment in said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Rensellaer R. Nelson, one of the judges of the circuit court of the United States for the district of Minnesota, this 19th day of July, A. D. 1873.

R. R. NELSON.
One of the Judges of the Circuit Court of the United States for the District of Minnesota.

(Indorsed:) U. S. C. court. The United States vs. J. N. Hall, A. F. Hawley, et al. Citation. Filed July 19, 1873, H. E. Mann, clerk. Gilfillan & Williams, attys. for defts.

Due service of the within is admitted.
July 19, 1873.

C. K. DAVIS, *Dist. Atty.*,
Per O. B., *Asst.*

5 *Schedule referred to in return to annexed writ of error.*

THE UNITED STATES
vs.
JOHN NORRIS HALL, JAMES JOHNSON THORNTON, Alpheus F. Hawley, James Boyd Hubbell, Philip Blat, James Ray Tinkham, William Reid, Daniel Harris Tyner, Marcus Tullius Cicero Flower, and Charles Theodor Heilborn.

Pleas before the honorable the judges of the circuit court of the United States of America in and for the district of Minnesota.

DISTRICT OF MINNESOTA, *ss:*

Be it remembered that on the sixth day of December, A. D. 1873, was filed in the clerk's office of said court the return to a writ of error theretofore issued out of said circuit court to the district court of the United States for said district, which writ of error, with the return thereto and the citation therewith returned, with proof of service thereon indorsed, are in the words and figures following, viz:

6 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judge of the district court of the United States for the district of Minnesota, greeting:

Because in the record and proceedings, and also in the rendition of the judgment of a plea which is in the said court, before you, between the United States of America, plaintiff, and John N. Hall, James J. Thornton, Alpheus F. Hawley, James B. Hubbell, Phillip Blatt, James R. Tinkham, William Reid, Daniel H. Tyner, Marcus T. C. Flower, Charles T. Heilborn, defendants, a manifest error hath happened, to the great damage of the said defendants, as by their complaint appears, we, being

willing that the error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid,
with all things concerning the same, to the circuit court of the
7 United States, together with this writ, so that you may have the
same at Saint Paul, in the said district, on the ninth day of December next, in the said circuit court to be then and there held, that, the records and proceedings aforesaid being inspected, the said circuit court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Salmon P. Chase, Chief-Justice of the Supreme Court of the United States of America, at Saint Paul, in the district of Minnesota, this 20th day of August, in the year of our Lord one thousand eight hundred and seventy-two, and of our Independence the ninety-seventh year.

[SEAL.]

H. E. MANN,
Clerk U. S. Circuit Court, Dist. of Minnesota.

The answer of the judge of the district court of the United States for the district of Minnesota in the foregoing writ mentioned.

The record and proceedings whereof mention is made in said writ with all things concerning the same, are hereby respectfully certified to the judges of the circuit court in a certain schedule to this
8 writ annexed, as by the same it is commanded.

Witness the Hon. Rensselaer R. Nelson, judge of said district court, and the seal thereof, at Saint Paul, in said district, this 25th day of December, 1872.

[SEAL.]

WM. A. SPENCER, *Clerk.*

(Endorsed:) U. S. C. court, dist. of Minnesota. United States, deft' in error, vs. J. N. Hall, plff. in error. Writ of error. Filed Aug. 20, 1872. Wm. A. Spencer, clerk U. S. dist. court, dist. Minn, by H. E. Mann, deputy. Gilfillan & Williams, Woolfolk & Brown, attys. for plff in error.

UNITED STATES OF AMERICA, *ss:*

To the United States, greeting:

You are hereby cited and admonished to be and appear at a
9 circuit court of the United States to be holden at Saint Paul, in the district of Minnesota, on the ninth day of December, A. D. 1872, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the district of Minnesota, wherein John N. Hall, James Joshua Thornton, Alpheus Fenn Hawley, James Boyd Hubbell, Phillip Blatt, James Ray Tinkham, William Reid, Daniel Harris Tyner, Marcus Tullius Cicero Flower, and Charles Theodor Heilborn are plaintiffs in error and the United States of America are defendants in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the honorable Salmon P. Chase, Chief-Justice of the Supreme Court of the United States, this 10th day of August, in the year of our Lord one thousand eight hundred and seventy-two.

R. R. NELSON,
Dist. Judge.

(Endorsed:) U. S. C. court, dist. of Minn. United States, deft. in error, vs. J. N. Hall et al., plff. in error. Citation. Filed August 20, 1872. Wm. A. Spencer, clk., by H. E. Mann, deputy. Gilfillan & Williams, atty's. for plff. in error.

Due service of the within citation is admitted.
August 20, 1872.

C. K. DAVIS,
Dist. Atty., Minn.

Schedule referred to in foregoing return.

U. S. district court, district of Minnesota.

THE UNITED STATES OF AMERICA
vs.
JOHN NORRIS HALL, JAMES JOSHUA THORNTON, Alpheus Fenn Hawley, James Boyd Hubbell, Phillip Blatt, James Ray Tinkham, William Reid, Daniel Harris Tyner, Marcus Tullius Cicero Flower, and Charles Theodor Heilborn.

Pleas before the honorable the judge of the United States district court for the district of Minnesota.

The summons and the return thereof in said action are in the words and figures following, to wit:

UNITED STATES OF AMERICA,
District of Minnesota:

The President of the United States of America to the marshal of the district of Minnesota, greeting:

You are hereby commanded to summon John Norris Hall, James Johnson Thornton, Alpheus Fenn Hawley, James Boyd Hubbell, Phillip Blatt, James Ray Tinkham, William Reid, Daniel Harris Tyner, Marcus Tullius Cicero Flower, and Charles Theodor Heilborn, defendants, to appear before the district court of the United States for the district of Minnesota aforesaid, at St. Paul, in said district, on the 26th day of July, A. D. 1869, then and there to answer unto the United States of America, plaintiff, in a plea that they render to said plaintiff the sum of $25,000.00 which they owe to said plaintiff and unjustly detain, to plaintiff's damage $25,000.00, which shall then and there be made to appear; and of this writ make due return.

Witness the Hon. Rensselaer R. Nelson, judge of the said district court of the United States of America, at Saint Paul, in said district of Minnesota, this 9th day of July, in the year of our Lord one thousand eight hundred and sixty-nine, and of our Independence the ninety-fourth year.

[SEAL.] WM. A. SPENCER, *Clerk.*
C. K. DAVIS,
Plaintiff's Attorney.

DIST. OF MINNESOTA, *ss:*

I hereby certify that I served the within summons on the within-named John N. Hall, Phillip Blatt, Jos. R. Tinkham, William Reid,

Danl. H. Tyner, & Chas. Heilborn, personally, at Mankato, in said dist., July 16, 1869; and I do further certify that I have made diligent search and inquiry for the others of the within-named defts., but cannot find them in this dist.

AUG. ARMSTRONG,
U. S. Marshal,
By J. R. CLEVELAND, *Dy.*

The pleadings in said action are as follows, to wit:

Declaration.

In the district court of the United States, district of Minnesota.

THE UNITED STATES OF AMERICA *vs.* JOHN NORRIS HALL, JAMES JOHNSON THORNton, Alpheus Fenn Hawley, James Boyd Hubbell, Phillip Blatt, James Ray Tinkham, William Reid, Daniel Harris Tyner, Marcus Tullius Cicero Flower, and Charles Theodor Heilborn.	Of the 26th day of July, 1869.

DISTRICT OF MINNESOTA, *ss:*

The United States of America, the plaintiff in this suit, com-
13 plains of John Norris Hall, James Johnson Thornton, Alpheus Fenn Hawley, James Boyd Hubbell, Philipp Blatt, James Ray Tinkham, William Reid, Daniel Harris Tyner, Marcus Tullius Cicero Flower, Charles Theodor Heilborn, of a plea that they render to the said the United States of America the sum of fifty thousand dollars, lawful money of the United States of America, which they owe and unjustly detain from it

For that whereas the said defendants heretofore, to wit, on the seventeenth of March, in the year of our Lord one thousand eight hundred and sixty-three, at the county of Blue Earth, in the State and district of Minnesota, by their certain writing-obligatory, sealed with their several seals, and duly executed to the plaintiff, acknowledge themselves to be held and firmly bound unto the plaintiff in the sum of twenty-five thousand dollars, parcel of the sum above demanded; yet the said defendants, or any of them, (although often requested so to do,) hath not as yet paid the said sum of twenty thousand dollars, or any part thereof, to the said plaintiff, but have hitherto wholly neglected and refused, and still neglect and refuse, so to do.

Whereupon, the said plaintiff saith that it is injured, and hath sustained damage to the amount of twenty-five thousand dollars, and therefore it brings its suit, &c.

14 And the said plaintiff brings here into court the said writing-obligatory, sealed as aforesaid, which gives sufficient evidence to the said court here of the debt aforesaid, in form aforesaid, the date whereof is a certain day and year therein mentioned, to wit, the day and year in that behalf above mentioned.

C. K. DAVIS,
U. S. Atty., Dist. of Minne.

Pleas.

In the district court of the United States of America, district of Minnesota.

THE UNITED STATES OF AMERICA
vs.
JOHN NORRIS HALL ET AL.

And the said defendants, by Woolfolk & Brown, their attorneys, come and defend the wrong and injury, when, &c., and crave oyer of the said supposed writing-obligatory in the said declaration mentioned, and it is read to them, &c.; and they also crave oyer of the condition of the said supposed writing-obligatory, and it is read to them, in these words:

"The condition of the foregoing obligation is such, that whereas the President of the United States hath, pursuant to law, appointed the said John N. Hall collector of taxes, under an act entitled 'An act
15 to provide internal revenue to support the Government and to pay interest on the public debt:' Now, therefore, if the said John Norris Hall has truly and faithfully executed and discharged, and shall continue truly and faithfully to execute and discharge, all the duties of the said office according to law, and shall justly and faithfully account for and pay over to the United States, in compliance with the orders and regulations of the Secretary of the Treasury, all public moneys which may come into his hands or possession, and if each and every deputy collector appointed by said collector has truly and faithfully executed and discharged, and shall continue truly and faithfully to execute and discharge, all the duties of such deputy collector according to law, then the above obligation to be void and of no effect; otherwise it shall abide and remain in full force and virtue." Duly signed and sealed by the parties hereto. Which being read and heard, the said defendants say that the said supposed writing-obligatory is not their deed. And of this they put themselves upon the country, &c.

WOOLFOLK & BROWN,
Attys. for Defendants.

2nd plea.

And the said defendants, by leave of the court first had in this
16 behalf, for further plea herein, by Woolfolk & Brown, their attorneys, come and defend the wrong and injury, when, &c., and crave oyer of the said supposed writing-obligatory in the said declaration mentioned, and it is read to them, &c.; and they also crave oyer of the condition of the said writing-obligatory, and it is read to them, in the words and figures following:

"The condition of the foregoing obligation is such, that whereas the President of the United States hath, pursuant to law, appointed the said John Norris Hall collector of taxes, under an act entitled 'An act to provide internal revenue to support the Government and to pay interest on the public debt:' Now, therefore, if the said John Norris Hall has truly and faithfully executed and discharged, and shall continue truly faithfully to execute and discharge, all the duties of the said office according to law, and shall justly and faithfully account for and pay over to the United States, in compliance with the orders and regulations of the Secretary of the Treasury, all public moneys which may come into his hands or possession, and if each and every deputy col-

lector appointed by said collector has truly and faithfully executed and discharged, and shall continue truly and faithfully to execute and discharge, all the duties of such deputy collector according to law,
17 then the above obligation to be void and of no effect; otherwise it shall abide and remain in full force and virtue." Duly signed and sealed by the parties hereto.

And the said defendants say actio non, because, they say, that the said defendant John Norris Hall, so having been appointed collector of taxes as aforesaid, and having received said appointment and entered upon the discharge of his duties as such collector, did, from time to time, and at all times, both before and after the making of the said writing-obligatory and the condition thereof, well and truly observe, perform, fulfil, and keep all and singular the articles, clauses, payments, conditions, and agreements in the said condition of the said writing-obligatory specified and mentioned, in all things therein contained, on his part to be observed, performed, fulfilled, and kept, according to the tenor and effect, true intent, and meaning of the said condition of the said writing-obligatory. And the said defendants further aver, that each and every deputy collector appointed by said collector John Norris Hall has truly and faithfully executed and discharged, and from time to time, and at all times, both before and after the making of the said writing-obligatory, and the said condition thereof, did well and truly perform, fulfil, and observe all the duties of deputy collec-
18 tors according to law, on their part to be observed, kept, and performed, as specified and mentioned in said writing-obligatory, and the condition thereof thereto attached.

Wherefore the said defendants say that all the conditions and obligations of the said writing-obligatory, and the condition thereof, have been complied with, and faithfully and truly performed, on the part of the said defendant, John Norris Hall; and this they are ready to verify. Wherefore they pray judgment, &c.

WOOLFOLK & BROWN,
Attys. for Defendants.

In the district court of the United States, district of Minnesota.

UNITED STATES OF AMERICA,
State of Minnesota, ss:

THE UNITED STATES OF AMERICA
vs.
JOHN NORRIS HALL ET AL.

And the said defendants, by Woolfolk & Brown, their attorneys, for further plea herein and to the several breaches assigned to the conditions of said writing-obligatory, say that the said plaintiff, by reason of anything by it in said declaration alleged, ought not, as to the sum of $8,203.06, part of the debt demanded, to have or maintain its aforesaid action thereof against them, the said defendants, because, they say, that the said plaintiff, before and at the time of the commencement of
19 this suit, to wit, at, &c., the district aforesaid, and from thence hitherto hath been, and still is, indebted to the said defendant John Norris Hall in the sum of $8,203.06, lawful money, for money before that time advanced to, paid out, expended by said defendant Hall, to and for the use of said plaintiff, and at its instance and request; and, also, in the like sum of $8,203.06, for money before and at that time due and owing from said plaintiff to said defendant Hall, for the work and labor of said Hall, and his servants and deputies, done and

performed by him, his servants and deputies, as such collector for said plaintiff, and at plaintiff's instance and request; and in the like sum of $8,203.06, due and owing from said plaintiff to said defendant Hall, for the salary of said Hall, as such collector, from the 17th day of March, 1863, to the 2d day of November, A. D. 1866; and in the like sum of $8,203.06, for the commission due from said plaintiff to said defendant Hall, on money collected by said Hall, and for express-charges paid by said Hall on money remitted him as such collector by his deputies; and in the like sum of $8,203.06, before that time, and prior to the commencement of this suit, due and owing from said plaintiff to said defendant Hall, for extra services of said Hall and his servants, done and performed by said Hall and his servants, at the special instance and request of said plaintiff; which said sums of money so due and owing from the said plaintiff to the said defendant Hall, they, the said defendants, are ready and willing, and hereby offer, to set off and allow to the said plaintiff, according to the form of the statute in such case made and provided; and this the said defendants are ready to verify, &c.

JAMES GILFILLAN AND
WOOLFOLK & BROWN,
Attys. for Defendants.

United States to John N. Hall late collector of internal revenue, first district of Minnesota.

	Dr.	Cr.
On compensation, account No. 435, for quarter ending Sept. 30, 1866:	$ cts.	
To rent of office to that date	60 00	
" lights in and about same	5 80	
" hire paid clerks	648 00	
" fuel for office	6 00	
	719 80	
On compensation, % No. 1124:		
Express-bills paid on moneys expressed to said Hall from deputies, from Oct. 1, 1864, to Oct. 1st, 1866	161 48	
On compensation, account No. 2169, up to and including November 2d, 1866:		
Amount paid deputies	5,010 00	
Rent of office, $64.00; lights for same, $1.00; fuel for same, $6	71 00	
Clerk-hire paid	176 00	
Express-charges on money transmitted to said Hall	51 40	
Suspended from previous % for advertising	5 50	
Balance due on collector's salary from July 1st, 1866, to Nov. 1st, 1867	298 00	
Clerk-hire paid in making up % during Nov. 2, 1866, & until books delivered to successor in office	2,094 00	
Assistant assessors' bills paid up to July 1, 1865	80 83	
	$7,786 78	

RECAPITULATION.

On compensation, % No. 435	$719 80
" " " " 1124	161 48
" " " " 2169	7,786 70
	$8,668 06

In the district court of the United States, district of Minnesota.

THE UNITED STATES OF AMERICA
vs.
JOHN NORRIS HALL ET AL.

Replication.

And the said plaintiff, to the plea of the said defendants by them first above pleaded, whereof they have put themselves upon the country, doth the like, &c.

C. K. DAVIS,
U. S. Dist. Atty.

22 And the said plaintiff, to the plea of the said defendants by them secondly above pleaded, saith that the said plaintiff ought not be debarred from having and maintaining its said action against the said defendants, because it says, and gives the court now here to understand and be informed, that, while it is true that the said writing-obligatory in the said declaration mentioned is subject to a certain condition thereunder written, which said condition, and all recitals in said writing-obligatory contained, are fully and correctly set forth and stated in the said plea of the said defendant, nevertheless, for assigning breaches of the said condition of the said writing-obligatory, the said plaintiff in fact saith that the said John Norris Hall hath not from the time of making the said writing-obligatory, and had not at the time of making the same, truly and faithfully executed and discharged the duties of said office according to law, but that the said defendant hath hitherto wholly neglected and refused so to do, contrary to the form and effect of the said writing-obligatory, and of the condition thereof; and this it is ready to verify. And the said plaintiff, for assigning a further breach of the said condition of the said writing-obligatory, further says, that

23 the said John Norris Hall has not, from the time of making the said writing-obligatory, justly and faithfully accounted for or paid over to the United States, in compliance with the orders and regulations of the Secretary of the Treasury, all public moneys which have come into his hands and possession, but that the said defendant did, prior to the commencement of this suit, have in his possession, and that there did come into his hands and possession, as such collector of internal revenue, long prior to the bringing of this suit, a large amount of public moneys, to wit, the sum of twenty thousand five hundred and three dollars and twenty-three cents, which, by the orders and regulations of the Secretary of the Treasury, he was required to account for and pay over to the United States long prior to the bringing of this action, but that the said defendant hath hitherto wholly neglected and refused to account for and pay over the same, though often thereto requested, and still so neglects and refuses, contrary to the form and effect of the said writing-obligatory, and of the condition thereof, to the plaintiff's damage twenty-five thousand dollars; and this it is ready to verify, &c.

And the said plaintiff, for assigning a further breach of the condition of the said writing-obligatory, further says that the several deputy collectors appointed by the said John Norris Hall, whose names the plaintiff

24 is unable to give, have not, from the time of making the said writing-obligatory, faithfully and truly executed and discharged their duties according to law, but that the said several deputy collectors did, long prior to the commencement of this suit, receive and collect,

as such deputy collectors, but in what amount distributively the plaintiff is unable to state, certain other public moneys, to wit, the sum of twenty-five thousand dollars, which, although it was their duty so to do, they have severally neglected and refused to pay over or to account for to the United States, and still so neglect and refuse, contrary to the form and effect of the said writing-obligatory, and of the condition thereof, to the plaintiff's damage twenty-five thousand dollars; and this it is ready to verify, &c.

And the said plaintiff, for assigning a further breach of the condition of the said writing-obligatory, further saith that the said John Norris Hall has not, from the time of making the said writing-obligatory, truly and faithfully executed and discharged the duties of the said office according to law; but that there was found due from the said Hall, as such collector, upon an adjustment, statement, and settlement of his accounts as such collector, had and made by the proper officers of the Treasury of the United States, on or about the 29th day of January, A. D. 1869, the further sum of twenty-one thousand one hundred and three dollars and twenty-three cents, on account of public moneys of the United States, with which he was then and there, and still is, chargeable as such collector, which sum, though long since due and payable to the United States, the said Hall has neglected and refused to pay over or to account for, and still does neglect and refuse to pay or to account, contrary to the form and effect of the said writing-obligatory, and of the condition thereof, to this plaintiff's damage twenty-five thousand dollars; and this it is ready to verify, &c.

Therefore, let a jury thereupon come before the said court on the 4th day of October, A. D. 1869, at the place of holding the said court, in the city of St. Paul, in said district, by whom, &c., and who neither, &c., because, &c., as well to try the said issues above joined between the said parties as to inquire of the truth of the matters by the said plaintiff above suggested and assigned, and to assess what damage the said plaintiff hath sustained by reason of the said breaches of the said condition of the said writing obligatory, the day is given to the said parties, at the same place, &c.

C. K. DAVIS, *Dist. Atty.*

District court of the United States for the district of Minnesota.

THE UNITED STATES
vs.
JOHN N. HALL ET AL.

It is hereby stipulated by and between the parties to the above-entitled action, by their respective attorneys, that the parties hereby waive a jury-trial in said cause, and consent to a trial thereof by the court without a jury.

C. K. DAVIS,
U. S. Dist. Atty.
WOOLFOLK & BROWN, WITH
JAMES GILFILLAN,
Attys. for Defendants.

U. S. district court, district of Minnesota, October term, A. D. 1871.

THURSDAY, *January* 18, 1872.

THE UNITED STATES
vs.
JOHN NORRIS HALL ET AL.

This cause coming on to be heard before the court without a jury, C.

K. Davis appears for plaintiff and James Gilfillan, esq., for defendants.

The case is opened for plaintiff by C. K. Davis. The proofs
27 on the part of the plaintiff are put in, and it rests its case.

Case opened for defendants by James Gilfillan, esqr. John Norris Hall is sworn and examined as a witness for defendant.

U. S. district court, district of Minnesota, October term, A. D. 1871.

FRIDAY, *January* 26, 1872.

THE UNITED STATES
vs.
JOHN NORRIS HALL ET AL.

This cause coming on to be further heard, the testimony was closed, and the cause was argued by the attorneys for the respective parties, and submitted to the court, and by the court held under advisement.

U. S. district court, district of Minnesota, October term, A. D. 1871.

THURSDAY, *June* 6, 1872.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
JOHN NORRIS HALL, JAMES JOHNSON THORNton, Alpheus Fenn Hawley, James Boyd Hubbell, Philipp Blatt, James Ray Tinkam, William Reid, Daniel Harris Tyner, Marcus
28 Tullius Cicero Flower, and Charles Theodor Heilborn, defendants.

The issues of fact in the above-entitled cause came on for trial at the October, 1871, term of the said court, and the plaintiff appeared by C. K. Davis, United States attorney for the district of Minnesota, and the defendants appeared by Messrs. Woolfolk & Brown and James Gilfillan, their attorneys, and a trial by jury was then and there waived by all of said parties, in writing, in manner and form provided by law, and the said cause was thereby agreed to be tried by the court without a jury; and the said cause was then and there so tried by the said court upon the pleadings, proofs, and arguments adduced by the said parties, and submitted; and the court, not being sufficiently advised of and concerning what should be its judgment in the premises, took time to consider thereof.

And the said court, being now sufficiently advised in the premises, it is by the said court hereby considered, ordered, and adjudged that the plaintiff do have and recover of and from the above-named defendants, and of and from each of them, the sum of eleven thousand five
29 hundred and seventeen $\frac{63}{100}$ dollars, with costs to be taxed.

June 6th, 1872.

R. R. NELSON, *Judge.*

In the district court of the United States for the district of Minnesota.

THE UNITED STATES
vs.
JOHN NORRIS HALL, JAMES JOHNSON THORNton, Alpheus Fenn Hawley, James Boyd Hubbell, Philip Blatt, James Ray Tinkam, William Reid, Daniel Harris Tyner, Marcus Tullius Cicero Flower, and Charles Theodor Heilborn.

Bill of Exceptions

Be it remembered that at the general term of this court held at the

city of St. Paul, within and for said district, on the first Monday in October, 1871, Hon. R. R. Nelson, district judge, presiding, this cause came on for trial, the parties, by their respective attorneys, made and filed a stipulation, in writing, whereby they waived a trial by jury, and consented that the case might be tried by the court without a jury; and thereupon the cause came on for trial, and was tried by the court without a jury, by his honor the said judge.

And, to maintain the issues on its part, the plaintiff offered in evidence a certain roll of papers to which was appended a cer-
30 tificate in the words and figures following, to wit:

TREASURY DEPARTMENT,
REGISTER'S OFFICE, *June* 3, 1869.

Pursuant to the act of March 3, 1797, entitled "An act to provide more effectually for the settlement of accounts between the United States and the receivers of public moneys," I, J. A. Graham, Acting Register of the Treasury Department, do hereby certify that the annexed copies of the report of the Fifth Auditor of the Treasury, numbered 90, 216, 474, 670, 858, 998, 1258, 1987, 3090 and 3339, as admitted and certified by the Comptroller, upon the accounts of John N. Hall, late collector of internal revenue for the first district of Minnesota, under his bonds, dated October 4, 1862, and March 17, 1863, and of the statement of differences therein, are a transcript from the books of the Treasury, and that the copies of the accounts of said collector are true copies of the original on file in this Office.

J. A. GRAHAM,
Acting Register.

To which roll of papers defendants objected that the same is not certified as a transcript of the whole account of the defendant Hall, but
31 only of certain portions thereof; which objection of the defendants was by his honor the judge overruled, and the said roll of papers admitted in evidence; to which ruling and decision the defendants, by their counsel, then and there excepted.

And in said papers, so received in evidence, there was stated as a balance in favor of the United States, and against the said John N. Hall, such collector, on the 9th day of February, 1869, the sum of $20,120. That upon such papers did not appear as credited to him any of the items or offsets hereinafter stated, and by the same it appeared that the collections of said John N. Hall, as collector during the year prior to the 30th day of October, 1866, amounted to $77,702.08, and that during such period no extra allowance over and above his salary and commissions as collector were made to said John N. Hall; and it was thereupon admitted that in October, 1870, defendants paid into court, and plaintiff accepted, $11,435.17 of such balance.

And thereupon the plaintiff rested its case.

And the defendants, to maintain the issues on their part, proved that, prior to the commencement of this action, the defendant John N. Hall submitted to the consideration of the accounting officers of the Treasury Department an itemized statement or account of moneys by him
32 paid to sixteen deputy collectors, by him employed in his collection district, during the months of July, August, September, and October, 1866, at the rate of three dollars per day each, amounting, in the aggregate, to five thousand and ten dollars, and asked to have the same allowed him as a credit in his said account with the United States,

and that prior to the commencement of this action said account was by such officers wholly rejected.

And, further to maintain the issues on their part, the defendants thereupon offered to prove by competent evidence the various items of said itemized statement or account, and that said John N. Hall, as such collector, necessarily employed within his collection-district, during the months of July, August, September, and October, 1866, sixteen deputy collectors, and necessarily and reasonably paid them at the rate of three dollars per day each, and that the aggregate so paid by him was five thousand and ten dollars, and also that during previous years of his term of office as such collector he had employed and paid for similar services, during said months in his said district, fifteen deputy collectors, at the same rate per day, and that always prior to the year 1866 the Treasury Department had allowed him as a credit in his
33 accounts with the United States the amounts so paid by him to such deputy collectors.

The court then and there admitted said evidence, and decided the facts to be as the defendants so offered to prove them, but then and there decided that said item of $5,010 was not a proper offset in this action, and that the rejection of the same by the accounting officers was legal; to which ruling and decision the defendants, by their counsel, then and there excepted.

And, further to maintain the issues on their part, the defendants proved that, prior to the commencement of the action, the defendant John N. Hall submitted to the consideration of the accounting officers of the Treasury Department an itemized statement or account of moneys by him paid for hire of clerks in his office, as such collector, during the quarter ending September 30, 1866, amounting to $648, and asked to have the same allowed him as a credit in his accounts with the United States, and that prior to the commencement of the action such account and claim was by such officers wholly rejected.

And, further to maintain the issues on their part, the defendants offered to prove by competent evidence the various items of said itemized
34 statement or account, and that said John N. Hall, as such collector, necessarily paid for hire of clerks in his said office during the quarter ending September 30, 1866, the said items amounting to $648, and also that prior thereto the Treasury Department had always allowed him as a credit in his accounts with the United States the amount of moneys by him necessarily paid for hire of clerks in his office.

The court then and there admitted such evidence, and decided the facts to be as the defendants so offered to prove them, but then and there decided that said item of $648 was not a proper offset in this action, and that the rejection of the same by the accounting officers was legal: to which ruling and decision the defendants, by their counsel, then and there excepted.

And, further to maintain the issues on their part, the defendants proved that, prior to the commencement of this action, the defendant John N. Hall submitted to the consideration of the accounting officers of the Treasury Department an itemized statement or account of moneys paid by him for hire of clerks in his said office, in making out the accounts and returns thereof, between the 1st day of October, 1866, and the 30th day of June, 1867, amounting to $1,100, and asked to have the
35 same allowed him as a credit in his said account with the United States, and that prior to the commencement of this action such account and claim was by such officers wholly rejected.

And, further to maintain the issues on their part, the defendants offered

to prove by competent evidence the items of said itemized statement or account, and that said John N. Hall had, between the 1st day of October, 1866, and the 30th day of June, 1867, necessarily paid for hire of clerks in the business of his said office, and in making out the accounts and returns thereof, the items set forth in said account*ing*, amounting to $1,100; that he was removed from his said office on the 1st day of November, 1866, during the collecting of his annual list, in the busiest part of the year, and when the clerical business of the office was necessarily behind.

The court then and there admitted the evidence, and decided the facts to be as the defendants so offered to prove them, but then and there decided that said item of $1,100 was not a proper set-off in this action, and that the rejection of the same by the accounting officers was legal; to which ruling and decision the defendants, by their counsel, then and there excepted.

And the defendants thereupon rested their case.

36 And thereupon the court rendered judgment for plaintiff, and against the defendants, for the sum of eleven thousand five hundred seventeen dollars sixty-three cents.

And because none of said matters do appear of record in said cause, I, the judge who tried the cause, have this 3d day of July, 1872, settled, signed, and sealed this bill of exceptions.

R. R. NELSON, *Judge.* [SEAL.]

District court of the United States for the district of Minnesota.

THE UNITED STATES OF AMERICA
vs.
JOHN NORRIS HALL ET AL.

Of the October term, in the year of our Lord one thousand eight hundred and seventy-one.

Afterwards, to wit, on the 6th day of June, A. D. 1872, came the said John Norris Hall et al., defendants, by Woolfolk & Brown, their attorneys, and say that in the record and proceedings aforesaid, and also in giving judgment aforesaid, there is manifest error in this, to wit, that by the record aforesaid it appears that, upon the several matters

37 of set-off appearing in said record, judgment was given for the said the United States of America and against the said John Norris Hall et al., whereas by the law of the land the said judgment ought to have been given upon said matter of set off for the said John Norris Hall et al. and against the said the United States of America; and the said John Norris Hall et al. pray that the judgment aforesaid, for the errors aforesaid, and other errors in the record and proceedings aforesaid, may be reversed, annulled, an' altogether held for nothing, and that they may be admitted to all things which they have lost by occasion of said judgment.

WOOLFOLK & BROWN,
Attys. for John Norris Hall et al., Defts.

(Endorsed:) U. S. district court, dist. of Minnesota. The United States vs. John Norris Hall et al. Return to circuit court. Filed Dec. 6, 1872. H. E. Mann, clerk.

38 And afterwards, to wit, at a general term of said circuit court begun and held at the city of Saint Paul, in said district, on the second Monday, being the ninth day, of December, in the year of our Lord one thousand eight hundred and seventy-two, and on the nineteenth

day of said December, the following proceeding, among others, was had, viz:

THE UNITED STATES
vs.
JOHN NORRIS HALL ET AL.

This cause, which was brought to this court from the United States district court for this district by writ of error, coming on to be heard, was argued by counsel and submitted to the court, and by the court held under advisement, his honor Judge Dillon sitting alone.

And afterwards, to wit, at a general term of said circuit court, begun and held at the city of Saint Paul, in said district, on the third Monday, being the sixteenth day, of June, in the year of our Lord one thousand eight hundred and seventy-three, and on the nineteenth day of said June, the following proceeding, among others, was had, viz:

39 UNITED STATES
vs.
JOHN NORRIS HALL ET AL.

In this cause, which was removed from the district court of the United States for this district by writ of error, and heretofore submitted to the court, the honorable John F. Dillon, judge, sitting alone, and by the court held under advisement, now, the court being advised in the premises, it is considered, ordered, and adjudged that the judgment of the said district court be, and the same is, in all respects, affirmed, and that the plaintiff also have and recover of and from the defendants it' costs in this behalf to be taxed, and have execution therefor.

Judgment-record signed this 19th day of June, A. D. 1873.

H. E. MANN, *Clerk.*

And afterwards, to wit, on the nineteenth day of July, 1873, came the said defendants, by Messrs. Gilfillan & Williams, their attorneys, and filed in the clerk's office of said court an allowance of a writ of error, which allowance was in writing and signed by the Hon. Rensselaer R. Nelson, one of the judge of said court, and in the words and figures following, viz:

40 Circuit court of the United for the district of Minnesota.

THE UNITED STATES OF AMERICA
vs.
JOHN NORRIS HALL, JAMES JOHNSON THORNton, James Boyd Hubbell, Philip Blatt, James Ray Tinkham, William Reid, Daniel Harris Tyner, Marcus Tullius Cicero Flower, Charles Theodor Heilborn.

And now, the above-named defendants, after a final judgment entered in this cause, come and show to the court that the matter in dispute exceeds the sum of two thousand dollars, and thereupon claim a writ of error from the said judgment to the Supreme Court of the United States next to be holden at Washington, on the second Monday of October next, and the same is accordingly allowed; and the plaintiffs in error are ordered to serve the usual citations according to law.

R. R. NELSON, *Judge.*

(Endorsed:) Filed July 19, 1873. H. E. Mann, clerk.

41 And afterwards, to wit, on the nineteenth day of July, A. D. 1873, came the said defendants, by their said attorneys, and filed in the clerk's office of said circuit court their bond, duly approved; which bond, with the approval thereon indorsed, are in the words and figures following, viz:

42 *Bond.*

Supreme court of the United States.

THE UNITED STATES OF AMERICA
vs.
JOHN NORRIS HALL, JAMES JOHNSON THORNTON, Alpheus Fenn Hawley, James Boyd Hubbell, Philip Blatt, James Ray Tinkham, William Reid, Daniel Harris Tyner, Marcus Tullius Cicero Flower, Charles Theodor Heilborn.

Know all men by these presents, that we, John Norris Hall, James Boyd Hubbell, Philip Blatt, and James Ray Tinkham, as principals, and John A. Willard, Samuel Randall, and John J. Shaubut, as sureties, all of the city of Mankato, county of Blue Earth, and State of Minnesota, are held and firmly bound unto the United States of America in the sum of fifteen thousand dollars, to which payment, well and truly to be made, we bind ourselves, and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals, and dated this eighth day of July, A. D. 1873.

Whereas the above-named John Norris Hall, James Johnson Thornton, Alpheus Fenn Hawley, James Boyd Hubbell, Philip Blatt,
43 James Ray Tinkham, William Reid, Daniel Harris Tyner, Marcus Tullius Cicero Flower, Charles Theodor Heilborn have presented a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of the United States for the district of Minnesota:

Now, therefore, the condition of the above obligation is such, that if the above-named John Norris Hall, James Johnson Thornton, Alpheus Fenn Hawley, James Boyd Hubbell, Philip Blatt, James Ray Tinkham, William Reid, Daniel Harris Tyner, Marcus Tullius Cicero Flower, Charles Theodor Heilborn shall prosecute their said writ of error to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation shall be void; otherwise the same shall be and remain in full force and virtue.

JOHN NORRIS HALL. [L. S.]
JAMES BOYD HUBBELL. [L. S.]
PHILIP BLATT. [L. S.]
JAMES RAY TINKAM. [L. S.]
JOHN A. WILLARD. [L. S.]
SAMUEL RANDALL. [L. S.]
JOHN J. SHAUBUT. [L. S.]

Signed & sealed in the presence of—
K. Z. HALL,
GEO. H. BREWSTER.

STATE OF MINNESOTA,
County of Blue Earth, ss:

Before me, on this 8th day of July, 1873, came John Norris
44 Hall, James Boyd Hubbell, Philip Blatt, and James Ray Tinkham, the principals in the foregoing bond, and, each for himself, acknowledged the execution of the same to be his free act and deed, for the uses and purposes therein set forth. And also, at the same time and place, came John A. Willard, Samuel Randall, and John J. Shaubut, whose names appear to the said bond, and who are the sureties therein named, and, each for himself, acknowledged the execution thereof to be his free act, and for the uses and purposes therein set forth, and who, being each first sworn, says that he is a resident and freeholder in the city of Mankato, and State aforesaid, and that he worth, above his debts, liabilities, and exemptions, the full sum of five thousand dollars.

JOHN A. WILLARD. [L. S.]
SAMUEL RANDALL. [L. S.]
JOHN J. SHAUBUT. [L. S.]

Acknowledged and sworn to before me this 8th July, A. D. 1873.
GEO. H. BREWSTER,
Notary Public, Mankato, Minn.

(Endorsed:) I hereby approve the within bond.
R. R. NELSON, *Judge.*

Filed July 19, 1873.
H. E. MANN, *Clerk.*

Fees: Writ, &c., 1.20; fil. papers, .50; dkt. 1.00; 100 fol. 15.00, 16.00; entries, .90—18.60.

(Indorsement on cover:) No. 156. John N. Hall, Jas. J. Thornton, A. F. Hawley, J. B. Hubbell, Philip Blatt, J. R. Tinkham, Wm. Reid, D. H. Tyner, M. T. C. Flower, & C. T. Heilborn, plaintiffs in error, vs. The United States. Minnesota C. C. U. S. Filed 2d March, 1874.

REC. 156—2

O

SUPREME COURT

OF THE

UNITED STATES.

JOHN N. HALL, *et al.*,
Plaintiffs in Error

vs.

UNITED STATES,
Defendant in Error.

Brief of Plaintiffs in Error.

H. J. HORN,
GILFILLAN & WILLIAMS,
Attorneys for Plaintiffs in Error.

SUPREME COURT

OF THE

UNITED STATES.

JOHN N. HALL, *et al.*, Plaintiffs in Error,

vs.

THE UNITED STATES, Defendant in Error.

SAME *vs.* SAME.

Statement of Facts.

These suits were against Hall, Collector of Internal Revenue in the First Collection District of Minnesota, and the other plaintiffs, his sureties, upon his official bonds as such collector.

On the trial, which was before the Court, without a jury, the United States made out its case by a transcript from the books of the Treasury, showing a balance due from the Collector of $20,120, which had been reduced by a subsequent payment of $11,435.17, leaving a final balance of $8,684.83.

The only question below arose upon certain set-offs pleaded by plaintiffs in error, the facts in regard to which (*see bill of exceptions, pp.* 13, 14 *and* 15, *printed record,*) were these:

The whole amount collected by the Collector during the year ending October 30, 1866, was $77,702.08, for collecting which no extra allowance, over and above his salary and commissions, was made to him.

During the months of July, August, September and October, of that year, he necessarily employed sixteen deputy collectors, and necessarily and reasonably paid them at the rate of three dollars per day, each, the aggregate so paid being $5,010.

During the previous years of his term of office, he had employed and paid for similar services during said months, fifteen deputy collectors, at the same rate per day, and that always, prior to 1866, the Treasury Department had allowed him, as a credit in his accounts with the United States, the amount so paid by him to such deputy collectors.

In the quarter ending September 30, 1866, he necessarily paid for hire of clerks in his office, $648. And prior to that time the department had always paid him, as a credit in his account, the amount necessarily paid by him for hire of clerks. And he also necessarily paid for hire of clerks in his office between the first day of October, 1866, and 30th day of June, 1867, $1,100.

And prior to suit brought, he presented his account for these three items for the consideration of the accounting officers of the Treasury Department, and asked to have the same allowed him as a credit in his account, and his account and claim for such items, was by said officers wholly rejected.

The trial court decided that neither of these items was a proper matter of set off in this action, and that the rejection by the accounting officers was legal, in other words, such re-

jection was final. To which decision the plaintiff in error excepted.

BRIEF.

I.

Each of these items was an equitable, though perhaps not strictly a legal claim against the United States. That similar items had always been previously allowed him, would perhaps be sufficient to show that they ought in fairness to be allowed.

Sec. 25, of the act of 1864, 13 *Statutes at Large*, 231, fixes the salary of collectors at $1,500 per annum, with a commission of three per cent. upon the first $100,000. The entire amount of salary and commissions to this collector, for the year ending October 30, 1866, was $3,831.06. His necessary expenditures in administering his office for the last four months of the year, were $5,658.

In anticipation of just such cases, the Secretary of the Treasury is, by sec. 25 referred to, authorized "to make such further allowances, from time to time, as may be reasonable, &c." The allowance of these items, therefore, does not require legislative sanction.

II.

The rule which controls such cases of set-off is stated in *U. S. vs. Macdaniel*, 7 *Peters*, 1, 11. "But there may be cases, in which, the service having been rendered, a compensation may be made within the discretion of the head of the department; and in such case, the court and jury will do, not what an auditor was authorized to do, but what the head of the department should have done, in sanctioning an equitable allowance."

See also cases of Ripley and Fillebrown, in the same report, immediately after the case of *Macdaniel, and,*

U. S. vs. Wilkins, 6 *Wheaton,* 135.

Gration vs. U. S., 15 *Peters,* 336.

U. S. vs. Robeson, 9 *ib.* 319.

H. J. HORN,
with GILFILLAN & WILLIAMS,
Attorneys for Plaintiffs in Error.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

JOHN N. HALL ET ALS., PLAINTIFFS IN ERROR,
vs.
THE UNITED STATES.

Nos. 155 and 156.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

Brief for the United States.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

JOHN N. HALL ET ALS., PLAINTIFFS IN ERROR,
vs.
THE UNITED STATES.
} Nos. 155 and 156.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MINNESOTA.

Brief for the United States.

No errors are assigned in these cases; but, from the brief, we can infer that the rejection of the same bill offered in set-off in both suits is the ruling believed to be erroneous.

It is admitted that these items constitute no *legal* claim, but it is urged that it is *equitable* that they should be allowed. In a matter depending entirely upon the statute, recourse can only be had to its provisions, and there is no room for equitable interference; certainly not where the statute expressly provides just what allowances shall be made, and by whom. If there was any equity in the collector's claim, it appealed to the Secretary of the Treasury and not to the court. Neither the section quoted—13 Stats. at Large, c. 173, § 25, pp. 231,

232—nor the cases cited support the position taken by these obligors. Section 25 declares "that there shall be allowed to collectors, in full compensation for their services *and that of their deputies*," a salary of $1,500, and commissions; and that certain items *specified*, which do *not* include rent, fuel, lights, or clerk-hire, may be allowed, if a detailed account thereof has been approved by the proper officers of the Treasury.

To this section is added the proviso upon which the set-off is apparently based, "that the Secretary of the Treasury be authorized to make such further allowances, from time to time, as may be reasonable in cases in which from the territorial extent of the district, or from the amount of internal duties collected, or from other circumstances, it may seem just to make such allowances." The circumstances, changing "from time to time," which may make it just to grant an allowance at one time and to withhold it at another, are to be considered by the Secretary of the Treasury, to whose discretion this whole matter is confided, without appeal from his determination, which is final.

The rule that where the approval or determination of any person is a prerequisite to the right of recovery a disapproval or adverse decision, or even *a refusal to announce any conclusion*, is a complete bar to the action, has been too often announced and is too well settled to require citation of authorities.

United States *vs.* McDaniel, 7 Peters, 11, cited in plaintiffs' brief, was not one in which the positive action of the head of a Department was required "from time to time" in making allowances, but involved the right to retain money actually paid by and equitably due from the United States, for services rendered the Government,

outside of the business for which he received his salary. In that case his claim was as valid without official approval as with it; here such approval is a condition-precedent. The same is true of the two succeeding cases reported in the same volume; and of United States *v.* Wilkins, 6 Wheaton, 135, in which compensation was expressly stipulated for as to be given for extra rations; nor was the amount left to any person's decision, but to the parties themselves, just as it is if nothing is said upon the subject. The applicability of United States *v.* Robeson, 9 Peters, 319, is not perceived. The allowance by the Secretary of the Treasury, under § 25, was not merely a mode of proof, but an exercise of judicial discretion. Gratiot *v.* United States, 15 Peters, 336, is not an authority, because Mr. Hall's rights were entirely dependent upon the statute under which he held his commission.

EDWIN B. SMITH,
Assistant Attorney-General.